

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2001-209-C - ORDER NO. 2002-594 ✓ de

AUGUST 22, 2002

IN RE: Application of BellSouth Telecommunications,) ORDER GRANTING
Inc. to Provide In-Region InterLATA Services) CLARIFICATION OF
Pursuant to Section 271 of the) ORDER NO. 2002-396
Telecommunications Act of 1996.)

This matter comes before the Public Service Commission of South Carolina ("Commission") by way of the Southeastern Competitive Carriers Association's ("SECCA's") Petition for Reconsideration or Clarification of Order No. 2002-396 ("Petition"). For the reasons discussed below, we deny SECCA's request for reconsideration but address the requested clarification of Order No. 2002-396.

Commission Order No. 2002-396, dated May 28, 2002, addressed various Petitions for Reconsideration, Rehearing, and/or Clarification of Order No. 2002-77, dated February 14, 2002.¹ One of the issues addressed by Order No. 2002-396 was a request for reconsideration by BellSouth Telecommunications, Inc. ("BellSouth") that Change Control Process ("CCP") violations should be considered Tier 2 penalties instead of Tier 1 penalties under the Incentive Payment Plan ("IPP").² SECCA asserts that Order

¹ Order No. 2002-77, dated February 14, 2002, was the Commission order addressing BellSouth's statement and compliance with Section 271 of the Telecommunications Act of 1996 ("1996 Act") and was issued by the Commission following notification by BellSouth of its intention to file a Section 271 application with the Federal Communications Commission ("FCC") to seek interLATA relief in South Carolina pursuant to Section 271 of the 1996 Act.

² In Order No. 2002-77, dated February 14, 2002, the Commission ordered modifications to the BellSouth proposed Self-Effectuating Enforcement Mechanism ("SEEM"), including changing the name from SEEM to IPP and requiring BellSouth to develop and implement a measurement regarding the responsiveness of

No. 2002-396 does not accurately reflect the Commission's vote on BellSouth's request for reconsideration of this issue, and SECCA requests reconsideration or clarification of this issue. Further, SECCA opines that not only does the language of Order No. 2002-396 not accurately reflect the Commission's vote, but that the language is ambiguous and confusing and appears to violate the provisions of S.C. Code Ann. Section 1-23-360 (1986) prohibiting ex parte communications.

Upon consideration of SECCA's Petition, the Commission recognizes that SECCA has previously filed a petition for reconsideration in this docket with respect to Order No. 2002-77. Parties are afforded only "one bite at the apple" when seeking reconsideration in a proceeding. While SECCA's instant Petition concerns the Commission's Order ruling on the previous requests for reconsideration, the Commission is of the opinion that it is not appropriate to consider a second petition for reconsideration. Therefore, the Commission denies SECCA's request for reconsideration. However, SECCA also requested clarification of Order No. 2002-396, and the Commission will take this opportunity to clarify its previous order.

SECCA correctly notes that the Commission denied BellSouth's motion for reconsideration requesting that penalties associated with violations of metrics associated with measuring BellSouth's responsiveness to CLECs' requests under the CCP be made Tier 2 penalties rather than Tier 1 penalties as required by Order No. 2002-77. Further, SECCA correctly points to the fact that Order No. 2002-396 does not state with precision

BellSouth to CLECs' requests under the CCP. Further, the Commission ordered BellSouth to include in the IPP at least one payment category under Tier 1 concerning the metric(s) for the responsiveness of BellSouth to CLECs' requests under the CCP. Order No. 2002-77 at 27, 68-70, and 119.

that BellSouth's request for reconsideration on this issue was denied but that Order No. 2002-396 provided that

the issue should receive further study. Therefore, the Commission directs the Commission Staff to enter into discussions with BellSouth to resolve the issues relative to Tier 1 and Tier 2 penalties for the CCP and to report back to the Commission prior to the FCC acting on BellSouth's 271 application for South Carolina.

Order No. 2002-396 at 14.

The directive from the Commission meeting where the Commission considered BellSouth's request for reconsideration reflects that the moving commissioner moved "to grant in part and deny in part" the issue of the Tier 1 penalty associated with the CCP. In granting clarification of the language of Order No. 2002-396, the Commission instructed that clarification be made as to the meaning of "granting and denying reconsideration on Tier 1/Tier 2 matter." The denial of BellSouth's requested reconsideration on this issue pertained to denying BellSouth's request to change the ordered Tier 1 penalty under the IPP to a Tier 2 penalty. The granting of reconsideration on this issue dealt with the Commission directing "the Staff to enter into discussions with BellSouth to resolve the issues relative to Tier 1 and Tier 2 penalties for the CCP and to report back to the Commission." Order No. 2002-396 at 14. In other words, while the Commission refused to change its decision at the time of the issuance of Order No. 2002-396, the Commission provided for the opportunity to revisit the issue upon a report coming back to the Commission.

This partial grant of reconsideration leads to SECCA's next point of reconsideration or clarification. That point being that the Commission's directive

contained in Order No. 2002-396 instructing Staff to enter into discussions with BellSouth to resolve the issues of the Tier 1 and Tier 2 penalties violates the ex parte communication prohibition contained in S.C. Code Ann. Section 1-23-360 (1986). SECCA asserts that Order No. 2002-396 appears to require the Staff to meet privately with BellSouth and to report back to the Commission to the exclusion of other parties.

The Commission clarifies the directive of Order No. 2002-396 requiring Staff to meet with BellSouth on the Tier1/ Tier 2 penalty issue to make clear to all parties that once a proposal on this issue is filed with the Commission that all parties to this docket will be afforded an opportunity to comment in writing on the proposal within a specified timeframe. Thus, the Commission's directive does not exclude the other parties and does not violate the ex parte prohibition contained in S.C. Code Ann. Section 1-23-260 (1986).

IT IS THEREFORE ORDERED THAT:

1. SECCA's request for reconsideration of the issue involving whether violations of the CCP should be classified as Tier 1 or Tier 2 penalties under the IPP is denied.
2. SECCA's request for clarification of whether violations of the CCP should be classified as Tier 1 or Tier 2 penalties under the IPP is granted.
3. Order No. 2002-396 is hereby clarified to reflect that BellSouth's motion for reconsideration requesting that penalties associated with violations of metrics associated with measuring BellSouth's responsiveness to CLECs' requests under the CCP be made Tier 2 penalties rather than Tier 1 penalties as required by Order No. 2002-77 is granted in part and denied in part.

4. Order No. 2002-396 is also clarified to reflect that BellSouth's requested reconsideration on this issue is denied in part insofar as BellSouth's request for the Commission to change the ordered Tier 1 penalty under the IPP to a Tier 2 penalty was denied.

5. Order No. 2002-396 is clarified to reflect that BellSouth's requested reconsideration on this issue was granted in part insofar as BellSouth's request for reconsideration was granted to the extent that further study of the issue would be afforded pursuant to the Commission directing the Staff to enter into discussions with BellSouth to resolve the issues relative to Tier 1 and Tier 2 penalties for the CCP and to report back to the Commission.

6. Order No. 2002-396 is further clarified to reflect that once a proposal related to the Tier 1/ Tier 2 issue of the penalty is filed, that all parties will be afforded the opportunity to respond to the proposal in writing within a specified timeframe.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)